

**CASE STUDY OF BUSINESS
COMPETITION SUPERVISORY
COMMISSION DECISION NO.
22/KPPU-I/2016 ABOUT EXCLUSIVE
DEALING AND MARKET CONTROL
BY PT. TIRTA INVESTAMA**

DECLARATION PAGE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Actually stated that the thesis writing with the title "**Case Study Business Competition Supervisory Commission Decision No. 22/KPPU-I/2016 About Exclusive Dealing And Market Control by PT. Tirta Investama**" is based on my own original research, thoughts and exposure. If there is someone else's work, I will include a clear source. When later this day deviations and untruths in this concept, then I am willing to accept academic provisions in accordance with applicable regulations at Muhammadiyah University of Yogyakarta. This is how I made it truthfully without any coercion from any party.

Name : Emha Ainun Rizal
Student Number : 20140610512
Faculty : Faculty of Law
Major : International Program for Law and Sharia
University : Universitas Muhammadiyah Yogyakarta

Yogyakarta, August 21st 2018



Emha Ainun Rizal

MOTTO

فَإِنَّ مَعَ الْعُسْرِ يُسْرًا

“For indeed, with hardship [will be] ease.”

(Q.S. Al Insyirah verse 5)

“Don't forget to Pray, Study and Play.”

(Emha Ainun Rizal)

God does not require us to succeed, God only tells us to fight without stopping.

(Emha Ainun Najib)

DEDICATION

This undergraduate thesis is dedicated to

My Lord, Allah SWT

Prophet Muhammad SAW

My Beloved Parents

Supadi

Mistini

Masini

My Lovely Brother & Sister

Lutfi

Rifki

Chamim Tohari

Yuyun

Nur Aini

Yayuk

FOREWORD



Alhamdulillah Walhamdulillah tsumma Alhamdulillah, thank you Allah SWT, The Most Merciful and Most Gracious who has given me His blessing and an opportunity to accomplish my Undergraduate Thesis as my final work to fulfill the requirement to obtain the degree of Bachelor of Law entitled **CASE STUDY OF BUSINESS COMPETITION SUPERVISORY COMMISSION DECISION NO. 22/KPPU-I/2016 ABOUT EXCLUSIVE DEALING AND MARKET CONTROL BY PT. TIRTA INVESTAMA** at International Program for Law and Sharia, Fakultas Hukum, Universitas Muhammadiyah Yogyakarta.

First of all, I would like to express sincere grateful to my parents Bapak Supadi, and Ibu Mistini, Ibu Masini and my brother & sister Lutfi, Rifki, Chamim Tohari, Yuyun, Nur Aini, Yayuk for their never ending prayers, supports, guidance and love.

Extraordinary thanks also go to my supervisor Bapak Mukti Fajar ND, Dr., S.H., M.Hum. who have guided me with patience, wisdom and compassion.

Allow me also to express my deepest gratitude to Bapak Nasrullah, S.H., S.Ag., MCL, and all the lecturers of Faculty of Law for their assistance and inspiration for my great future. Deepest appreciation also goes to all staff Faculty of Law.

I would like to thanks to my best friends, Andi Tenri Abang HS, Arista Indah Astuti, Astri Istyawati, Annisa Riani Artha, Andi Rifky Maulana Efendy, Mega Purnama Humaira, Arif Hartavian, Levy, Widya Aulia, Dean Adams, FE Fikran Al Furqon, Nur Alfin, Hari Adipurna, Rizki Habibullah, Hafizd Swandaru Prabowo, Muhammad Syarkowy, Mohammad Risky Saputra, and all my beloved IPOLS Batch 2014. Special thanks also go to all IPOLianS and Yunia Setyo Purvitasari for all prayers and supports.

Big thanks also belongs to my KKN 026 2018 mates, who support me.

Finally, I do expect the thesis will give benefits for readers and future researches.

Emha Ainun Rizal

LIFT OF STATUTES

1945 Constitution

Book III of the Civil Code

Guidelines for the Business Competition Supervisory Commission No. 11 of 2011 on Guidelines of Article 17

Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition

Law No. 48 of 2009 about Judicial Power

Presidential Decree No. 75 of 1999 on the Business Competition Supervisory Commission.

Regulation of the Business Competition Supervisory Commission No. 1 of 2010 on Procedures for Case Handling

Regulation of the Business Competition Supervisory Commission No. 5 of 2011 on Implementation Guidelines of Article 15

LIST OF FIGURES

FIGURE 1

The Procedure for Handling Cases by KPPU

FIGURE 2

The Procedures for Handling Cases of Unfair Business Competition PT. Tirta
Investama by KPPU

LIST OF ABBREVIATIONS

DOJ-AD : Antitrust Division Department of Justice

FTC : Federal Trade Commission

IMF : International Monetary Fund

KAE : Key Account Executive

SO : Star Outlet

TABLE OF CONTENTS

ABSTRACT	i
APPROVAL PAGE	ii
ENDORSEMENT PAGE	iii
DECLARATION PAGE	iv
MOTTO	v
DEDICATION	vi
FOREWORD	vii
LIST OF STATUTES	ix
LIST OF TABLES	x
LIST OF ABBREVIATIONS	xi
TABLE OF CONTENTS	xii
CHAPTER I INTRODUCTION	1
A. BACKGROUND.....	1
B. RESEARCH PROBLEM	4
C. OBJECTIVE OF RESEARCH	4
D. BENEFIT OF RESEARCH	4
CHAPTER II LITERATURE REVIEW	6
A. EXCLUSIVE DEALING.....	6
1. EXCLUSIVE DISTRIBUTION AGREEMENT	7
2. TYING AGREEMENT	8
3. VERTICAL AGREEMENT ON DISCOUNT	10
B. MARKET CONTRL	11

C. TIRTA INVESTAMA COMPANY	13
D. BALINA AGUNG PERKASA COMPANY	15
E. TIRTA FRESINDO JAYA COMPANY	16
F. PER SE ILLEGAL AND RULE OF REASON APPROACH	17
G. CASE POSITION	20
CHAPTER III RESEARCH METHODOLOGY	26
A. TYPE OF RESEARCH	26
B. TYPE OF DATA	26
C. DATA COLLECTION	27
D. RESEARCH APPROACH	27
E. DATA ANALYSIS	27
CHAPTER IV FINDING AND ANALYSIS	29
A. THE MECHANISM OF HANDLING CASES OF BUSINESS COMPETITION BY KPPU	29
B. THE LEGAL CONSIDERATIONS OF KPPU’S DECISIONS NO. 22/KPPU-I/2016 CONCERNING EXCLUSIVE DEALING AND MARKET CONTROL BY PT. TIRTA INVESTAMA	37
1. ANALYSIS OF VIOLATIONS ARTICLE 15 PARAGRAPH 3 LETTER B CONCERNING EXCLUSIVE DEALING	42
2. ANALYSIS OF VIOLATIONS ARTICLE 19 LETTERS A AND B CONCERNING MARKET CONTROL	51
3. THE APPROACH USED BY THE KPPU IN CASE	61
CHAPTER V CLOSING	64

A. CONCLUSION	64
B. RECOMMENDATION	64
BIBLIOGRAPHY	66